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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/794,637	02/03/1997	JOHN S. HENDRICKS	5033	6885

7590 08/15/2002

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GRANT, CHRISTOPHER C

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

2611

DATE MAILED: 08/15/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 08/794,637	Applicant(s) Hendricks et al.
Examiner Christopher Grant	Art Unit 2611

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on May 23, 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1, 2, 4-25, and 28-158 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 8-25, 28-52, and 61-158 is/are allowed.

6) Claim(s) 1, 2, 4-7, and 53-60 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	6) <input type="checkbox"/> Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-2, 4-7 and 53-60 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The current invention is to allocate bandwidth to programs and/or categories using an algorithm, wherein the algorithm is based on buy rates, margin of profit, length of program and any contractual requirements. See the specification at page 71, lines 1-4.

The specification fails to enable one skilled in the art to make and/or use "selecting specific programs received from television programming sources, wherein the step of selecting uses an algorithm to select specific programs based on each programs' bandwidth requirement" as recited in claim 1, lines 3-5 and similarly in claim 53, line 3.

Telephone Interview

2. On 8/6/2002, the examiner informed John Harrop that the specification does not appear to support the subject matter of originally provided claim 3 now incorporated into claims 1 and 53. Mr. Harrop indicated (on 8/8/2002) that support can be found at pages 70-71 and 75-76. The specification, at pages 70-71, discloses that the algorithm allocates bandwidth based on buy rates,

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margin of profit, length of program and any contractual requirements. The specification, at pages 75-76, describes dividing bandwidth based upon priority levels and the examiner contends that this is an allocating procedure not a selecting procedure. The examiner posits that the specification fails to teach how to make or use the limitation described above in paragraph 1.

In view of the telephone interview, the specification, and the claims, the examiner contends that it is not clear if the selecting step and the allocating step are the same steps.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2 and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yurt and Hang.

Considering claim 1, Yurt discloses a method of allocating bandwidth to a plurality of programs, wherein each of said programs corresponding to one of a plurality of categories, the method comprising:

a) selecting programs received from television programming sources (see the entire reference including but not limited to col. 18, lines 58-64 and col. 6, lines 1-37); and

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b) allocating bandwidth (col. 17, line 59 - col. 18, line 3). Note that every program corresponds to a category. For example, the movie "Colombo" corresponds to the mystery category and movie "The French connection" corresponds to the drama category.

However, Yurt fails to specifically disclose using an algorithm to select specific programs based on each program's bandwidth requirement and continuing the allocating step until all the programs are allocated or all of the bandwidth is allocated as recited in the claim.

Hang discloses selecting and/or allocating bandwidth to programs based on each programs' bandwidth requirement and continuing the allocating step until all the programs are allocated or all the bandwidth is allocated. See figure 1 and col. 3, line 10 - col. 4, line 65 and col. 9, line 62 - col. 10, line 3.

It would have been obvious to one of ordinary skill in the art to modify Yurt's system to include selecting or allocating programs based on each programs' bandwidth requirement and allocating bandwidth to the programs until all the programs are allocated or all the bandwidth is allocated, as taught by Hang, for the advantage of dynamically allocating bandwidth to programs based on the programs' bandwidth requirement for efficient program transmission to subscribers.

Claim 2 is met by the combined systems of Yurt and Hang, since bandwidth are dynamically allocated based on each programs' bandwidth over time.

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As for claims 4, 6 and 7, the combined systems of Yurt and Hang, fail to specifically disclose selecting programs based on buy rates, programs watched information and marketing information as recited in the claims.

The examiner takes Official Notice that it is notoriously well known in the art to select programs for transmission to subscribers based on buy rates, programs watched and other marketing and statistical information for the advantage of providing popular programs to subscribers. For example, the Nielsen rating system is the most widely known television marketing survey technique that performs periodic review of television viewer-ship. Broadcasters use Nielsen type rating systems to determine which programs to broadcast to subscribers and advertising rates.

It would have been obvious to one of ordinary skill in the art to modify the combined systems of Yurt and Hang (if necessary) to include selecting programs based on buy rates, programs watched information and marketing information, because these are typical subscriber actions that are surveyed by marketing companies to determine which programs to broadcast and the rates for commercials (statistical analysis).

As for claim 5, the combined systems of Yurt and Hang, fail to specifically disclose selecting programs based on program length as recited in the claim.

The examiner takes Official Notice that it is notoriously well known in the art to select programs for broadcast based on the length of the programs for the advantage of scheduling

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similar time slot programs together. It is well known in the art to schedule 1/2 hour programs together and to start 1 hour programs on the hour. For example note the following television schedule or program lineup:

- a) 10:00pm Network magazine (1 hour);
- b) 11:00pm News (1/2 hour);
- c) 11:30pm The Tonight Show (1 hour).

It would have been obvious to one of ordinary skill in the art to modify the combined systems of Yurt and Hang (if necessary) to include selecting programs based on the program length, because it is a typical broadcasting technique used for scheduling programs into specific time slots.

Allowable Subject Matter

5. Claims 8-25, 28-52 and 61-158 avoid the prior art because the prior art fails to disclose or suggest a method of allocating bandwidth to a plurality of programs, each programs corresponding to a plurality of categories, the method comprising the steps of prioritizing each of the programs, dividing the bandwidth, allocating and continuing the allocating step; or a method of transmitting a plurality of programs to a cable headend comprising the steps of prioritizing each of the programs, forming, appending a header, dividing bandwidth, allocating and continuing allocating; or a method of transmitting programs to a plurality of transponders comprising the steps of prioritizing each of the programs, forming, allocating, continuing allocating and

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transmitting; or a method of transmitting a plurality of programs to first and second cable headends comprising the steps of prioritizing each of the programs, allocating a first amount of bandwidth, continuing the first bandwidth allocation, allocating a second amount of bandwidth, continuing the second bandwidth allocation, transmitting programs in the first and second amount of bandwidth to the first and second cable headend; or a computer assisted packaging system for generating program control information, packaging programs and for allocating bandwidth to a plurality of programs, comprising a multiplexer for allocating bandwidth, a delivery control processor for receiving commands from a central processing unit; or a computer assisted packaging system for allocating bandwidth to a plurality of programs, each program corresponding to a plurality of categories, comprising a multiplexer for allocating bandwidth, a delivery control processor unit for selecting programs and central processing unit as recited in **the claims.**

Response to Arguments

6. Applicant's response filed 5/23/2002 have been fully considered.

Conclusion

7. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

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Washington, D.C. 20231

or faxed to:

(703) 872-9314 (for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chris Grant whose telephone number is (703) 305-4755. The examiner can normally be reached on Monday-Friday from 8:00am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile, can be reached on (703) 305-4380.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is (703) 306 0377.



**Christopher Grant
Primary Examiner
August 10, 2002**